antenna site locations in each area, which results in the co-location of competing radio common carrier service facilities in many instances. As a result, one carrier will frequently know when another carrier is intending to add a facility at a particular location due to common contacts with antenna site owners and managers.

43. This situation creates a serious potential for anticompetitive conduct under a first come, first served procedure. Upon learning that a competitor is planning to expand into a particular geographic area at a particular site, an incumbent licensee at that site could effectively preempt the frequency by rushing to file an application. The elimination of the 60 day mutually-exclusive application window will effectively preclude the carrier seeking the expansion from counteracting this preemptive "strike" with a competing proposal. This will frustrate the ability to expand and improve service, and could have the unintended consequence of encouraging litigation.[19/]

44. One way for an existing carrier to avoid being "boxed in" in the aforementioned manner would be to inundate the Commission with filings for every conceivable area of future

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[19/] Unable to file a competing proposal, a carrier cut-off by a preemptive strike application may have no alternative but to file a petition to deny raising the issue of anti-competitive motivation. Obviously, the first-come, first-served rule was intended by the Commission to avoid conflicts, not foster conflicts.

service expansion on existing channels.[20] Any proposed rule which encourages this course of conduct must be reconsidered. A floodgate of applications in peripheral areas would end up slowing down rather than expediting the Commission's application processes, thereby defeating the intended purpose of the first come, first served rule. Forcing carriers to prematurely pursue peripheral filings also would have an adverse effect on carrier costs and, ultimately, the cost of service to the public.

45. The Commenters believe that there are much better methods than the adoption of first come, first served processing for the Commission to expedite its application processing and avoid mutual exclusivities. For example, the Commission could and should accord itself the authority to assign an applicant a different channel in the same frequency band as the one requested in order to resolve a mutual exclusivity. For example, assume that there is a mutually-exclusive application conflict on the frequency 454.450 MHz in Little Rock, Arkansas. If one of the two competing applicants was licensed for the same frequency in the surrounding area while the other was not, the Commission should be able to resolve the mutual exclusivity by selecting an alternate UHF frequency which could be operated in the same configuration and at the same power, to the applicant with no particular need for 454.450 MHz. To facilitate this process, the

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[20] Also, procedures which encourage carriers to pursue authorizations in peripheral areas raise the specter of "warehousing" that the Commission on many occasions has sought to avoid.

Commission could place the burden on the applicant with the particular wide-area need for 454.450 MHz to identify the alternate frequency and demonstrate that it was available operating on the same technical parameters as those originally proposed by its competitor.

46. Notably, a process by which the Commission selects and assigns available frequencies to resolve conflicts has worked well in the assignment of paging spectrum in the 931-932 MHz band. There would appear to be no reason for the Commission not to give itself the same authority with respect to non-900 MHz frequencies in order to increase its flexibility and to enable it to resolve conflicts without the need for lottery or comparative hearing procedures.

47. Alternatively, the Commission could shorten the window for the filing of competing applications to 30 days, thereby cutting down the number of instances in which conflicts arise.

48. A final note on the first come, first served concept. It is not clear that paging frequencies in the 930-931 MHz band are exempted from the proposal. Certainly, it makes no sense to enable an applicant to automatically receive its frequency preference in this band just because it happens to be the first to file. In implementing the current 931-932 MHz frequency assignment plan, the Commission uses its discretion to

preserve frequencies that are part of regional systems even if separation criteria are technically met.[21/]

B. Conditional Grants

49. The Commission is proposing to have Public Mobile Service applicants self-certify their engineering. With the new certification in place, all authorizations in the paging and radio telephone services would be granted on the condition of non-interference for the entire term of the license. The Commission would retain the right to order the licensee, without affording an opportunity for hearing, to suspend operation of the facilities if interference occurs.

50. As earlier noted, the Commenters generally support the self-certification concept. In the vast majority of circumstances, applications are prosecuted and granted without engineering or technical problems arising. It makes eminent sense, therefore, to adopt a procedure which allows applications to be processed on an expedited basis under these circumstances.

51. There is, however, one aspect of the self-certification process which is potentially quite troubling. Most applicants and consulting engineers rely upon either the Commission's database or commercially available databases to prepare applications. Proposed rule Section 22.101 intends to

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[21/] For example, a new market entrant specifying a preference for a particular frequency which meets separation criteria may be assigned a different frequency if the Commission concludes that granting the original request would interfere with expansion prospects of another carrier operating a wide-area system on that frequency in the region of the request.

make it clear that such databases are "unofficial", while the actual applications, notifications, correspondence and other material in the actual station file constitutes the "official" station record. Can applicants "certify" engineering in good faith based upon unofficial databases? The answer should be yes. The entire effort to streamline the application preparation and prosecution process will be completely undermined if applicants are required to conduct a physical review of the actual station file in order to properly certify their applications.

52. This is not a matter of simply academic concern. By "strengthening" the certification requirement with respect to applicant engineering, the question arises whether an error on the applicant's part with respect to a technical matter would constitute a "false certification". Historically, false certifications in applications have been considered by the Commission to be forms of misrepresentation or lack or candor. Under the Commission's recently adopted policy statement on standards for assessing forfeitures, misrepresentations and lacks of candor are among the most serious rule violations, resulting in Section 503 forfeitures for common carriers in the base amount of $80,000 per violation. If the Commission moves towards self-certification of engineering proposals, it must make it clear that certifications based in good faith upon "unofficial" databases do not constitute grounds for the imposition of a forfeiture.

53. The Commenters also strenuously oppose the idea that licenses granted under the new rules would be considered conditional throughout the license term. At present, authorizations which have been granted in due course cannot be rescinded or modified without the licensee being given notice and an opportunity for a hearing.[22/] Converting all licenses to a conditional status creates uncertainty, could adversely affect financing, and would generally devalue common carrier operations.

54. The Commenters understand that the Commission must be given a reasonable opportunity to rescind or modify grants which are based upon erroneous self-certified engineering. There would appear, however, for there to be no reason for the conditions on such a license to remain in place indefinitely. The Commenters recommend that granted authorizations be considered conditional for a brief period (perhaps 90 days) following the commencement of service to the public and the filing of a notification of completion of construction with the Commission.[23/] If a carrier manages to implement service and operate without objection for 90 days, the prospects of an

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[22/] This protection derives from Section 312 of the Communications Act.

[23/] The Commission also could accord itself the authority to extend the 90 day condition date in the event that an objection was filed within the 90 day period on engineering grounds that the Commission needed additional time to assess.

engineering problem arising thereafter would appear to be remote.[24] At this point it would make sense for the condition on the authorization to expire and for the carrier to be able to proceed with the normal certainty of an unconditioned license. Of course, the Commission would retain the authority to rescind, revoke or modify the authorization upon notice and hearing if a problem arose after the conditioned period.

55. By proceeding in the fashion recommended by the Commenters, the Commission can enjoy the benefits of self-certification, retain some flexibility to revise or modify authorizations which raise previously unidentified engineering and technical problems[25], while according licensees the necessary certainty that comes over time with the issuance of an unconditional license.

### C. Elimination of the Use of Frequency-Agile Transmitters

56. The Notice proposes a rule requiring a separate transmitter for every assigned channel at each carrier location.

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[24] If the Commission is concerned that the prospects for interference would not be known in the early stages of operation when a newly built station is more lightly loaded, it might adopt a procedure by which there is a post-construction coordination procedure in which the licensee notifies co-channel licensees in the general area. The Commenters would prefer a coordination procedure of this nature to a permanently conditioned license.

[25] The proposed procedure would encourage co-channel licensees to notify the Commission promptly if there is a perceived interference problem, and not to sleep on their rights. This is analogous to the common law principle of laches.

This proposed rule is specifically designed to eliminate a common practice in the industry whereby one frequency-agile transmitter is installed at a site where two or more channels are authorized. The Commission's intent is to avoid inefficient use of the spectrum and to discourage warehousing.

57. The Commenters oppose this proposed rule change for a number of reasons. First and foremost, frequency-agile transmitters provide a cost-efficient means of initiating service on a new frequency before there is sufficient traffic to justify a dedicated transmitter. Consider, for example, a situation in which a carrier has two fully loaded paging stations in operation in the heart of a major metropolitan area, and operates these stations with dedicated transmitters. Subscribers to each station may desire wide-area service which will enable them to travel into less congested outlying areas. The carrier could satisfy these demands by establishing facilities on both frequencies in outlying areas utilizing a frequency-agile transmitter. This configuration would provide an efficient and cost-effective method of meeting wide-area needs of a variety of customers.[26/]

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[26/] The Commission should be aware that the use of such transmitters is generally transparent to the subscriber. Paging messages are stored in batches when they are presented to the terminal and the transmitting equipment is capable of switching back and forth instantaneously between multiple frequencies as often as required to process the stored messages promptly and efficiently.

58. The Commission appears to wish to prohibit the use of frequency-agile transmitters in order to avoid "warehousing". However, in the Commenters' view, it does not constitute "warehousing" for a carrier to plan for the foreseeable future and secure authorizations for frequencies for which there is a projected use in the near term. Because of uncertainties in the licensing process and demand trends, it is not possible to always perfectly correlate system demand to capacity. The Commission's rules must, therefore, offer some measure of flexibility which enables a carrier to adjust its construction and operating plans to current market conditions. Permitting the use of multiple frequency transmitters provides the needed flexibility.

59. When the Commission last sought comment on a possible restriction on the use of multi-frequency transmitters, several prominent members of the industry opposed the restriction and indicated that the use of such transmitters was prevalent in the industry.[27/] Some of the Commenters are themselves utilizing frequency-agile transmitters at this time. Naturally, they are concerned about any Commission rule change that would render unlawful their current operations and those of a variety of other leading industry members.

60. The proposed rule change also has significant cost implications. It was not that long ago that the Commission

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[27/] See Comments filed in response to PacTel Paging's Request for Declaratory Ruling Regarding the Use of Multi-Frequency Transmitters Under Part 22 of the Commission's Rules, MSD 89-30, October 30, 1989.

declined to issue a declaratory ruling prohibiting the use of multiple frequency transmitters.[28/] Since that time, the use of such transmitters has accelerated. The cost of replacing them all with dedicated transmitters is substantial. Again, such costs ultimately must be recovered through subscriber charges.

61. The elimination of frequency-agile transmitters is unlikely to deter frequency speculation because the rules, as proposed, do not require a minimum input power on transmitters. Accordingly, a speculator could continue to hoard a frequency by buying a very low powered transmitter with an investment of as little as several thousand dollars. Obviously, if the proposed rule could be met with so minimal an investment, the rule change will not effectively deter speculation. Thus, only legitimate operators with bona fide service intentions will be harmed by the new restriction.

62. There would appear to be several less drastic alternatives to the adoption of the across-the-board ban on frequency-agile transmitters as proposed by the Commission. First, the Commission could continue to allow carriers to utilize

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[28/] See PacTel Paging, Notice of Withdrawal of Request for Declaratory Ruling, MSD 89-30, dated April 16, 1991. PacTel Paging, one of the Commenters here, sought a declaration in 1989 that the use of frequency-agile transmitters was prohibited under previous rules and policy. The Commission made it clear in consultations after comments were filed that it was not prepared to issue the requested ruling. Consequently, PacTel withdrew the request and commenced itself utilizing such transmitters as others were doing. In view of the reliance of PacTel and others on the existing practice, and changes in the technology and the industry, PacTel has altered its view and now supports the continued use of frequency-agile transmitters.

such transmitters, but limit their use to a specified time period following system implementation.[29] After all, it is during the start-up phase of an operation that traffic is not likely to be sufficiently heavy to necessitate a full-time dedicated transmitter. The Commenters could accept a rule in which the use of a frequency-agile transmitter was permitted for a period of 2 to 3 years following the commencement of service from the authorized location.

63. Second, the Commission could limit the restriction on the use of frequency-agile transmitters to those major metropolitan areas of the country where frequency availability presents the greatest problems. In smaller markets where there are ample channels available, no useful purpose would appear to be served by a blanket prohibition on the use of frequency-agile transmitters at the discretion of operating carriers.[30] Thus, if the Commission is insistent upon placing some restrictions on the use of frequency-agile transmitters, the Commenters recommend that they be limited to the major metropolitan areas (perhaps, the top 100 MSAs). The Commenters also would support a

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[29] The Commission could couple this approach with a rule requiring carriers to notify the Commission whenever they are using multi-frequency transmitters, as is the practice of some carriers under the present rules. This approach would provide the Commission with the information necessary to enforce the sunset provision that the Commenters propose.

[30] Warehousing would not appear to be a concern in markets where there are ample frequencies available.

limitation whereby the number of frequencies on a transmitter was limited to three.

64. Finally, under any circumstances, the Commission must grandfather the use frequency-agile transmitters that are in use if and when the rule changes so as not to penalize carriers who have proceeded to implement systems in accordance with current rule provisions. At a minimum, the Commission should grandfather existing multi-frequency transmitter arrangements for several years following the effective date of any rule changes.

65. The same considerations that cause the Commenters to oppose the adoption of restrictions on the use of frequency-agile transmitters for Part 22 stations also give rise to objections to proposed rule Section 22.375 respecting the shared use of transmitters with other services. The proposed rule would perpetuate the prohibition on the shared use of base and fixed transmitters licensed in the Public Mobile Services and in any other radio service. In several instances, the Commenters also are licensed to operate private carrier paging facilities under Part 90 of the Commission's rules. In some instances, these private radio facilities are technically capable of being operated in conjunction with Part 22 stations utilizing frequency-agile transmitters due to the proximity of the private carrier paging and common carrier paging bands. In light of the diminution in distinctions between private carrier and common carrier paging services, the Commenters see no reason why licensees should not be able to use a single transmitter in both

of these services in circumstances where the dedicated use of a separate transmitter is not necessitated by market demand.[31/]

66. The trend in Commission regulation has been toward according licensees increased flexibility in the use of licensed facilities in order to promote efficiency. In this instance, the restriction on the use of a single transmitter in multiple services appears to be a throwback to a former era in which rigid distinctions were drawn and maintained between separate services.

### D. No Reapplication for One Year If an Authorization Expires

67. Where an authorization is automatically terminated for failure to begin service within the construction period, the Notice proposes that the applicant be barred for one year from requesting the same channel (or, in the case of 931 MHz paging stations, a channel in the same frequency range) in the same general area. The Commenters believe that the proposed rule would severely prejudice legitimate carriers who are unable to build at a particular location for legitimate reasons (i.e. the last minute loss of a site, unexpected delays in equipment delivery, economic or technological changes, etc.). An expanding system in a dynamic market will be the subject of numerous Commission filings. Due to the lag time that exists between the

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[31/] The use of frequency-agile transmitters to provide service under both Part 22 and Part 90 could be subject to the same restrictions as apply to Part 22 alone. For example, the their use might be restricted in the largest metropolitan areas.

time that an application is conceived and an authorization granted and the system can be implemented, the needs of the market can change. For example, the loss of a large customer in a geographic area may temporarily obviate the need to construct in a particular location. However, there would appear to be no reason for punishing the applicant by precluding a subsequent filing as needs change.

68. The proposed rule appears to have been intended by the Commission to put an end to the "shell game" by which speculators constantly modify and reapply for particular channels in order to keep their authorizations alive while deferring the initiation of public service. Again, there would appear to be ways for the Commission to accomplish this task which are much less harmful to serious operators. The Commenters would support revised rules which (a) only apply the refiling restriction if the authorization holder allows the permit to expire without action rather than submitting the authorization for cancellation prior to the termination date; (b) limit the refiling restriction to situations where there are not a sufficient number of channels available for all applicants (or perhaps, limit the restriction to the top metropolitan areas); (c) reduce the refiling prohibition period to 120 days, which would be long enough to permit other interested filers to emerge, but not so long as to preclude reapplication in response to changed circumstances; (d) exclude from the reapplication ban authorizations which have expired but are part of a wide-area system in which there are

other transmitters operating within 70 miles; or (e) provide that, in a mutually-exclusive application situation, any applicant who had previously let an authorization expire for that frequency in the same general area within the last year, the other applicant would receive a grant of the contested frequency.

69. Adoption of one or more of these revisions would curb the preemption of frequencies through repetitive sequential filings, while according licensees sufficient flexibility to implement changes to reflect new market conditions.

E. Definition of Permissive Changes

70. As earlier noted, the Commenters support the Commission's effort to eliminate application and notification requirements for facility modifications deemed "minor" under the revised rules. However, the Commenters urge the Commission to expand the definition of "minor" changes in certain respects.

71. The existing rules under which the Commenters operate recognize as "minor" certain system changes which extend service contours by small amounts. For example, current Section 22.23(c)(2) recognizes that an enlargement of a reliable service area contour by less than one mile is not major. The Commenters urge the Commission to adopt a similar *de minimis* exception under the new rules. Licensees should not be required to file applications for or notifications respecting system changes which do not alter the relevant contour by more than two kilometers in any direction.

72. If need be, the Commission could qualify this exception in certain respects. For example, the Commission could prohibit an applicant from invoking this minor extension rule if co-channel stations were operating pursuant to an agreement to accept contour overlaps. In this circumstance, no further overlap should be tolerated absent mutual consent. Furthermore, the Commission could empower an applicant to invoke the two kilometer rule on only one occasion with respect to a particular transmitting facility so that it could not be used in a stepping-stone approach towards contour expansion. And, the Commission could conclude that any such permissive change would be subject to termination without hearing in the event that the expansion resulted in harmful interference.

73. The Commenters also urge the Commission to define permissive changes with reference to interference contours rather than reliable service area contours. There are numerous circumstances in which a proposal which increases a licensee's reliable service area contour will have no effect on the exterior composite interference contour. Yet, under the proposed rules, changes of this nature would require application to the Commission. There would, however, appear to be no useful purpose served by such filings since the prospects for interference to co-channel systems in adjacent areas would not be increased as long as the composite interference contour was not extended.

## F. Definition of Service to the Public

74. The Commission is proposing to require that authorization holders initiate service to public subscribers over constructed facilities within the construction deadline in order to avoid the automatic termination of the facility. The Commenters submit that this definition is too rigid.

75. In rolling out a new system, it is important for the operator to have completed the construction of a sufficient number of transmitters to enable the carrier to provide a competitive service. Often, however, the carrier has no true control over the timing of the grant of various components of a wide-area system. For example, one key site may get tied up due to a Commission licensing question or problem, or due to various state regulatory or zoning considerations. Under these circumstances, a carrier may be forced to defer marketing the new system until the full complement of transmitters has been built out. These are decisions best left to the marketplace, and not to Commission regulations.

76. The Commenters suggest that the Commission define construction completion to require that authorized facilities be constructed, interconnected with the PSTN, transmitting station identification and technically capable of providing the authorized service as a condition to filing a notification of completion of construction. Satisfying these conditions will require the holder of the authorization to expend sufficient sums

of money to deter speculation and warehousing. At the same time, these requirements will accord sufficient flexibility to enable the carrier to complete all components of wide-area system construction prior to selling service to the public.[32/]

## G. Cure Periods

77. The existing rules provide a brief "grace" period in which licensees may seek the reinstatement of expired or unrenewed authorizations. Section 22.43(a)(3) of the rules allows applicants to seek reinstatement of an expired construction permit within 30 days after the construction deadline. Similarly, Section 22.44(a)(2) allows licensees to seek reinstatement of an expired license within 30 days after the renewal deadline. However, the proposed rules would eliminate these "grace" periods.

78. The Commenters support the retention of these brief grace periods. Even if an authorization holder acts with due diligence, there can be unexpected last-minute circumstances which prevent the completion of construction within the initial construction period. For example, unexpected inclement weather, the loss of an antenna site, an equipment failure, illness or other unpredictable consequences could cause a last-minute delay.

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[32/] This definition also will put an end to the litigation over whether users of the service qualify as paying subscribers. In the past, the Commission has been drawn into disputes as to whether so-called "friendly-user" programs are adequate to meet the requirements of service to the public. See Miami CGSA, Inc., Mimeo No. 4507 (Com. Car. Bur., released May 31, 1984).

While the reinstatement of an authorization under these circumstances should not be automatic, there would appear to be no useful purpose served by having the applicant and the Commission start all over again under all such circumstances.

79. The elimination of the grace period is particularly draconian in view of the proposed limitations on the reapplication for expired facilities. In combination, these rule sections would create an inflexible set of circumstances contrary to the public interest.

80. As far as renewals are concerned, the Commission should recognize that renewals only crop up every ten years. As a consequence, licensees are not intimately familiar with the renewal process, which can lead to oversights and unexpected delays in the preparation and filing of renewal applications. No harm would appear to be caused by retaining a brief grace period in which short term oversights of this nature could be corrected without requiring applicants to go back to "square one".

## H. Limitations on Settlement Payments

81. The Commission is now proposing that the rules respecting proposed "buy outs" of opponents or petitioners return full circle. Prior to 1982, the Commission had specific rules limiting dismissing or withdrawing applicants or petitioners to the reimbursement of demonstrated, reasonable, out-of-pocket expenses. The Commission then eliminated this cap on reimbursements in the belief that the nature and extent of such

payments were better left to determinations by the applicants themselves.[33/] Now, fearing that application and protest procedures may have been abused, the Commission proposes to reinstate an absolute limit on settlement payments.

82. The extreme vacillations of the Commission on this point suggest that a middle ground provides the best alternative. It would appear to make sense for the Commission to adopt a general rule prohibiting dismissing applicants and petitioners from receiving payments in excess of reasonable and prudent out-of-pocket expenses without prior Commission approval. The Commission could further indicate by rule that it intended to approve reimbursements in excess of out-of-pocket expenses only in limited circumstances where the dismissing applicant or petitioner appeared to have a sufficient prospect of success on the merits to warrant its continued prosecution of its position in the absence of a settlement payment in excess of its out-of-pocket expenses.

83. A limited exception of this nature would enable the Commission to deal with hard cases where both sides have reasonable positions which, in light of uncertainty regarding the governing law, could enable them to prevail. It is cases of this nature which are likely to be the most protracted and the least likely to settle under a policy where settlement payments are limited to out-of-pocket expenses.

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[33/] See Revision and Update of Part 22 of the Commission's Rules, 95 FCC 2d at 794-96.

## I. Requests For Comparative Hearing

84. The Notice properly notes that there have been no comparative hearings held pursuant to existing Section 22.33(c) of the rules which enables a carrier seeking to add a particular frequency to a wide-area station to request a comparative hearing in lieu of a lottery. The Commission concludes that this rule section has served no useful purpose, and should be eliminated. The Commenters disagree.

85. The Commission's reasoning ignores the impact that the existing rule section has in encouraging settlements. Although none of the Commenters have ever ended up in a comparative hearing under Section 22.33(c), several have been able to utilize their ability to request such a hearing as a means of encouraging competing applicants to change frequencies. In effect, the comparative hearing rule tends to encourage rational frequency selections which foster wide-area service which the public is demanding.

86. Obviously, the existing rule has not proved unduly burdensome to the Commission since none of the allowed hearings have in fact proved necessary. The Commission should not abandon a rule that serves a useful purpose and does not place undue burdens on the agency.

## IV. FURTHER RULE CHANGES THE COMMISSION SHOULD CONSIDER

87. In addition to the many rule changes which are under active consideration by the Commission in the Notice, the Commenters suggest that the Commission should give serious consideration to the following additional proposals:

### A. Staggered Renewal Periods

88. The radio common carrier industry has grown by leaps and bounds in the recent past, and there is absolutely no indication that the pace of growth will slow for the indefinite future. Indeed, increases in the numbers of carriers and stations appear to be taking a geometric progression.

89. In other circumstances where the Commission is faced with a large number of licensees and stations, it has adopted staggered renewal periods so that not all station licenses in the nation must be renewed at the same time.[34/] This reduces the burden on the Commission's staff and facilitates filing by members of the industry.

90. The need for a change in the renewal filing deadlines is evidenced by the recent renewal experience. All "non-wireline" renewal applications were due by April 1, 1989. The Commission was absolutely inundated with applications on this filing date. The process of listing these applications as

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[34/] For example, radio and television renewals are due at different times based upon the state where the city of license is located.

accepted for filing and granted took almost two years. In some instances, renewal authorizations still have not been issued, and those which have are replete with errors due to the sheer volume of paperwork that an over-taxed staff was required to process.

91. The existing renewal deadlines also make little sense conceptually. For all intents and purposes, the distinction between wireline and non-wireline radio common carriers have been eliminated in the Paging and Radiotelephone services. It makes little sense to segregate the renewal windows according to this antiquated demarcation. This is particularly true since more and more facilities are being passed back and forth between wireline and non-wireline companies, which could lead to confusion regarding the operative renewal deadline.

92. The Commenters urge the Commission to adopt staggered renewal deadlines for all Part 22 facilities. Because many wide-area systems cross state boundaries, filing windows based upon state locations would not appear to make much sense. As an alternative, the Commission could consider having the renewal period differ depending upon alphabetical sequence of the call sign (e.g. KA__ through KC__ due on the same date) or the last number in the station call sign (e.g. call signs ending in the number "1" would have to be renewed in the year 2001, call signs ending in the number "2" would have to be renewed in the year 2002, etc.).

93. The Commenters also ask the Commission to reduce the information requested at renewal time. The Commenters spent

considerable time assembling extensive information regarding facility changes and modifications which post-dated the last issued authorization to accompany their renewal filings as required by the rules. In hindsight, this effort appears to have been largely wasted since the Commission has not had the resources to process all the information and issue correct updated licenses.

94. As a result, the Commenters request that the renewal rules and forms be revised to require only a simple postcard filing listing the licensee name and address, the call sign and latest authorization number.[35/]

B. Resubmission of Dismissed Applications

95. Under both the existing and proposed rules, the Commission has the authority to dismiss defective applications. An applicant who has its application dismissed and wishes to retain its original position in the processing line must seek reconsideration of the dismissal. Otherwise, the applicant must start all over again at the end of the processing line.

96. In other services, the Commission takes a different approach. For example, in the Private Radio Services, a dismissed applicant may regain its position in the processing

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[35/] The filers would not object if the renewal form had a box to check to alert the Commission, or other interested parties, that there had been major facility changes filed subsequent to the last authorization. However, the renewal applicant should not be required to document the changes in the renewal.

line by curing the identified defect and resubmitting the application as amended, within a 30 day period.[36] The Commenters urge the Commission to consider adopting a similar rule in Part 22.

97. The proposal the Commenters recommend would work to the benefit of those whose applications contain inadvertent and minor omissions. There would appear to be no public interest reason not to accommodate applicants in this category. Notably, the Commenters believe that the litigation engendered by the dismissal of applications would be largely eliminated if the consequences of the dismissal could be easily cured.

### C. Use of Lowband Facilities for Control Purposes

98. As a general rule, low band paging facilities in the 35 MHz and 43 MHz band appear to be under utilized. These frequencies would also appear to be technically capable of being utilized as control frequencies.

### D. Permissive Changes Above Line A

99. Several of the Commenters operate facilities above Line A. The current rules prevent the implementation of even permissive changes above Line A. Rather, FCC Form 401

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[36] There would appear to be no incentive for an applicant to submit an incomplete of defective application if the particular omission or defect could be cured in 30 days.